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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of ADRIENE and  
GREGORY E. BIDWELL.

ADRIENE BIDWELL,

Appellant,

v.

GREGORY E. BIDWELL,

Respondent.

D048320

(Super. Ct. No. DN129346)

APPEAL from an order of the Superior Court of San Diego County, Jeffrey S.  
Bostwick, Judge. Affirmed.

Adriene Bidwell filed a petition for dissolution of her marriage to Gregory Bidwell. The parties stipulated that all issues had been settled except the community's interest, if any, in a residence located at 3746 Silverleaf Lane, Vista, California. The trial court concluded the residence was owned by Adriene's parents, but the community was

entitled to reimbursement of funds used to complete its construction. The trial court found Adriene breached her fiduciary duty to Gregory in the management of community funds, and awarded Gregory attorney's fees. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Adriene and Gregory Bidwell were married in May 1997, and lived in a house that was Adriene's separate property in Redwood City, California. In 1998, they spoke to Adriene's parents, Everett and Sigrid Ricker, about moving to Vista and building their primary residence on the Ricker's property. The Rickers have operated a flower farm in Vista for over 31 years. They own a 10-acre parcel at 3730 Silverleaf Lane and a 16-acre parcel at 3746 Silverleaf Lane. Everett Ricker represented to Adriene that in his will Adriene would receive as her separate property approximately four acres of property around 3746 Silverleaf after Everett and his wife died.

On June 2, 1998, Gregory executed an interspousal transfer deed designating the Redwood City house as Adriene's separate property. Adriene sold it and used the \$244,459.46 proceeds to construct a single-family residence at 3746 Silverleaf Lane. She and Gregory lived in a trailer on the Silverleaf property during construction. Community funds were used to complete the construction because Adriene's separate money was insufficient. Adriene and Gregory paid taxes on 5 acres of the 16-acre parcel pursuant to an oral agreement with Everett Ricker. Adriene and Gregory initially were joint beneficiaries under their homeowner's insurance policy. At trial, Adriene testified that earlier on the day of her testimony she called the insurance company and had Gregory's name removed from the insurance policy.

The trial court found Adriene breached her fiduciary duty, and ruled, "The community participated in the construction of a 3,000 square foot home on land belonging to a third party, which greatly improved the fair market value of said property, but provided no tangible long-term benefit to the community. As [Adriene] was aware, the community had no expectation of a legal interest in Silverleaf. Even [Adriene's] separate property interest in Silverleaf was entirely executory. The expenditure of community funds to improve the third party of another [*sic*], with no realistic and legally cognizable expectation that the investment would inure to the benefit of the community is, on these facts, a breach of fiduciary duty under Family Code, [sections] 721, [subdivision] (b) and 1101, [subdivision] (a)." The trial court reviewed the Quickzoom report and found Gregory was entitled to a \$19,425 reimbursement, and awarded Gregory attorney's fees and costs in an amount subject to proof.

## DISCUSSION

### I.

Adriene concedes the trial court correctly determined the amount Gregory is owed by way of reimbursement, but contends the trial court erred in finding she breached her fiduciary duty and awarding attorney's fees. "We review factual findings of the family court for substantial evidence, examining the evidence in the light most favorable to the prevailing party." (*In re Marriage of Rossi* (2001) 90 Cal.App.4th 34, 41.) All conflicts must be resolved in favor of the prevailing party, and all legitimate and reasonable inferences indulged to uphold the finding if possible. (*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 31.)

"According to Family Code section 721, subdivision (b), husbands and wives 'are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. . . .' 'If one spouse secures an advantage from [an interspousal] transaction, a statutory presumption arises under section 721 that the advantaged spouse exercised undue influence and the transaction will be set aside.' [Citations.] 'Generally, a spouse obtains an advantage if that spouse's position is improved, he or she obtains a favorable opportunity, or otherwise gains, benefits, or profits.' " (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1519.)

"When a presumption of undue influence applies to a transaction, the spouse who was advantaged by the transaction must establish that the disadvantaged spouse's action 'was freely and voluntarily made, with full knowledge of all the facts, and with a complete understanding of the effect of the transaction.' " (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 738-739.) The presumption of undue influence may be overcome by a preponderance of the evidence. (*In re Marriage of Matthews* (2005) 133 Cal.App.4th 624, 631.)

Here, the trial court found: "[Adriene] prevailed upon [Gregory] to expend community funds to improve real property owned by her parents. Although [Gregory] did so willingly, it is also clear he did so under the expectation that the community would benefit in some manner from the expenditure. This expectation was heightened by many assurances to that effect made by [Adriene] and her family. [Adriene] assured [Gregory] that the residence would be 'our home' although she had been told by her father . . . that

she would receive only a portion of the Silverleaf property, and that she would do so only through inheritance." Substantial evidence supported the trial court's finding.

We affirm the trial court's grant of attorney's fees to Gregory. "When, as here, a spouse has breached her fiduciary duty, but not in a manner displaying fraud, malice, or oppression within the meaning of Civil Code section 3294, Family Code section 1101, subdivision (g) governs the applicable remedies. [Citation.] Subdivision (g) provides that these remedies '*shall* include, but not be limited to, an award to the other spouse of 50 percent, or an amount equal to 50 percent, of any asset undisclosed or transferred in breach of the fiduciary duty *plus* attorney's fees and court costs.' " (*In re Marriage of Hokanson* (1998) 68 Cal.App.4th 987, 992.)

## II.

Gregory contends the trial court erred in calculating the amount of community funds used to construct the Silverleaf home. Because Gregory did not file a notice of appeal or cross-appeal, he has waived any challenge to the trial court's calculations. (Code Civ. Proc., § 906; *Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439; *Building Industry Assn. v. City of Oceanside* (1994) 27 Cal.App.4th 744, 758, fn. 9; *Puritan Leasing Co. v. August* (1976) 16 Cal.3d 451, 463; *California State Employees' Assn. v. State Personnel Bd.* (1986) 178 Cal.App.3d 372, 382, fn. 7 ["respondent who has not appealed from the judgment may not urge error on appeal"]; *Richards v. Flower* (1961) 193 Cal.App.2d 233, 238 [issue raised by respondents "is clearly one that should have been raised by means of a cross-appeal, and since no notice of appeal from this portion of the judgment was ever filed by [respondents], this court is without power to consider this

point"]; *Henigson v. Bank of America* ( 1948) 32 Cal.2d 240, 244 [parties who have not appealed cannot challenge a trial court's findings of fact].)

### III.

We reject Gregory's suggestion that we make the following finding: "As to the legal issue of whether the Rickers were unjustly enriched by the construction of the Vista residence on their real property, . . . as a matter of law, they were so enriched and remand this issue to the trial court for further consideration of the relief available to [him] based upon that unjust enrichment." We agree with the trial court: "The Rickers are not parties to this action, nor has [Gregory] alleged or proven facts sufficient to establish that he and the Rickers had an agreement to convey real property as of a date certain or on specified terms."

### DISPOSITION

The judgment is affirmed. Gregory Bidwell is awarded costs on appeal.

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O'ROURKE, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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IRION, J.